without investigating its genuineness. That case is to be distinguished from the present, however, in that there the check was payable to order, hence there was a duty to identify the party presenting, while in this case there was no such duty because the check was payable to bearer. Also, in that case payment was made direct to the indorsing bank, while here the check was sent through correspondent banks. Here the complainant bank was the only one negligent. The drawee bank is chargeable with knowledge of the check drawers' signature and must pass upon it. DANIELLS' NEGOT. INSTRUMENTS (5th Ed.) § 1654A; *Bank* v. *Bank,* 58 Ohio St. 207; *Howard* v. *Bank,* 28 La. 727; *Bank* v. *Bank,* 107 Mo. 402; *Janin* v. *Bank,* 92 Cal. 14; *Peoples Bank* v. *Cupps,* 91 Pa. St. 315; *Bank* v. *Peyton,* 15 Tex. Civ. App. 184; *Mackintosh* v. *Bank,* 123 Mass. 393; and *Bank* v. *Bank,* 101 Iowa 530. Also see note 2 L. R. A. 96. And if the drawee bank pays out money upon a forged check it cannot recover back the amount from the party to whom it was paid. *Bank* v. *Ricker,* 71 Ill. 439; *Bank* v. *Bank,* 58 Ohio St. 207. *Neal* v. *Coburn,* 92 Me. 139; *Bank* v. *Peyton,* supra; *Bank* v. *Pease,* 168 Ill. 40; and *Bank* v. *Bank,* 46 N. Y. 77. Contra, *Bank* v. *Bangs,* 106 Mass. 441, where payment was made through a clearing house and cognizance is taken of certain clearing house rules. But it seems on principle that such a fact does not alter the case. (See Cases, supra.) See also dissenting opinion in *Bank* v. *Bank,* 88 Tenn. 299.

CARRIERS—LIMITATION OF AMOUNT OF LIABILITY BY SPECIAL CONTRACT—NEGLIGENCE—LIMITATION VALID.—Plaintiff lost, through the negligence of the defendant, a suit case which she shipped from Philadelphia to Norwood, Pa. The express receipt contained a stipulation that, in consideration of the carrying rate charged, the company should not be liable for more than fifty dollars, which was agreed to be the value of the goods. *Held,* that this stipulation was valid and the plaintiff could not recover the real value of the goods, even though they were lost through the negligence of the defendant. *MacFarlane* v. *Adams Express Co.* (1905), (C. C. E. D. Pa.) 137 Fed. Rep. 982.

This decision is in accordance with the weight of authority; *Hart* v. *Penna. R. R. Co.* (1884), 112 U. S. 331, 5 Sup. Ct. Rep. 151 being probably the leading case; but it is worthy of special note inasmuch as the facts upon which it is based arose in Pennsylvania, whose courts have steadfastly adhered to the old common law rule that a common carrier cannot limit the amount of its liability for negligence. See *Grogan* v. *Adams Express Co.* (1886), 114 Pa. St. 523, 7 Atl. Rep. 134, which declares that a carrier is liable for the full value of goods lost through negligence even though the shipper had signed a contract limiting the amount of its liability and had declined to pay for any higher risk; also *Weiller* v. *Railroad Co.* (1890), 134 Pa. St. 310, 19 Atl. Rep. 702, and *Ruppel* v. *Railroad Co.* (1895), 167 Pa. St. 166, 31 Atl. Rep. 478. *Hart* v. *Penna. R. R. Co.* holds that a contract, fairly made, between the shipper and the carrier, is valid, even though the carrier be negligent, when an "agreed valuation," on which the rate of freight is based, is stated therein. Most courts agree, on grounds of public policy, that a common carrier should not be allowed to limit its common

law liability for negligence; but *Hart* v. *Penna. R. R. Co.* and the cases which follow it, draw a distinction between limiting liability in general for negligence and limiting liability to a valuation agreed upon in advance. The Texas and Ohio courts follow the Pennsylvania rule. See *S. P. Ry. Co.* v. *Maddox* (1889), 75 Tex. 300, 12 S. W. Rep. 815, *St. Louis A. & T. Ry. Co. v. Robbins* (1889), 14 S. W. Rep. (Tex.) 1075; and *Ambach* v. *B. & O. Ry. Co.* (1896), 4 Ohio Dec. 467 (following *U. S. Express Company* v. *Blackman* (1875), 28 Ohio St. 14). In Iowa, § 2074 of the Code prohibits contracts of this kind; see *Burlington C. R. & N. Ry. Co.* (1900), 84 N. W. Rep. (Iowa) 673. In regard to the consideration for such contracts, it was *held* in *St. Louis S. W. Ry Co.* v. *McIntyre* (1904), 82 S. W. Rep. (Mo.) 346, that there must be an actual consideration, that is, a lower freight rate really given; and in *Evansville & T. H. Ry. Co.* v. *Kevekordes* (1904), 69 N. E. Rep. (Ind.) 1022, that the consideration must be more than the mere contractual relation of the parties. In *Bermel* v. *New York, N. H. & H. Ry. Co.* (1901), 70 N. Y. S. 804, the rather unique doctrine was announced that a contract of this kind merely relieved the carrier of its common law liability as an insurer, and that the carrier was still liable, as bailee for hire, for the full value of the goods lost through negligence. This decision was sustained in (1901), 62 App. Div. 389, but overruled in (1903), 172 N. Y. 639.

CARRIERS—OWNERS OF PASSENGER ELEVATORS—NOT LIABLE AS COMMON CARRIERS.—Plaintiff, an employé of one of defendant's tenants, was injured by the falling of one of defendant's elevators, in which he was a passenger. Held, that the trial court erred in not giving the following charges to the jury: "1. The owner of a building containing a passenger elevator therein, operated by such owner, is not a common carrier, and not an insurer of the safety of persons using the elevator;" "2. If the jury find that the defendant used reasonable care and prudence in the construction, maintenance, and operation of the elevator, the verdict should be for the defendant. *Edwards* v. *Manufacturers' Bldg. Co.* (1905), — R. I. —, 61 Atl. Rep. 646.

The decision in this case is clearly opposed to the great weight of authority, in so far as it declares that the owner of a passenger elevator is not a common carrier, and liable as such. The court adopts the reasoning in *Griffen* v. *Manice* (1901), 166 N. Y. 197, which holds that the owner of a passenger elevator need not exercise more than reasonable care and prudence in its maintenance and operation, and that he should not be held to the extraordinary liability of a common carrier of passengers inasmuch as the operation of a passenger elevator is not essentially different, in its nature, from the operation of other dangerous appliances in a building, such as heating apparatus, electric lights, etc., and the law of real property requires only reasonable care in the operation of such appliances. This seems to be the rule in Massachusetts, *Salomon* v. *Sternfeld* (1886), 142 Mass. 83, 7 N. E. 43; and in Michigan, *Burgess* v. *Stowe* (1903), 134 Mich. 204, 96 N. W. Rep. 29. On the other hand, the great majority of cases hold that the owner of a passenger elevator is a common carrier, and, like common carriers, must exercise the highest degree of care which human foresight can suggest. See the list of such cases given in THOMPSON, COMMENTARIES